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THE DEMISE OF THE FEATHERSEDDING EPOCH
IN THE RAILROAD INDUSTRY

By

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B.S. Montana State University, 1963

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MONTANA STATE UNIVERSITY

1965

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CHAPTER I

THE PROBLEM AND DEFINITION OF TERMS USED

On November 2, 1959 railroad management throughout the nation announced proposed changes in the industry's work rules. The rules changes were to supersede time honored work rules, many of which have existed since the 1800's. Railroad management considered the new work rules a means of modernizing employment and pay practices, so as to make them commensurate to present working conditions and technological innovations.¹

The unions resented managements' implications that many of their jobs were no longer necessary. They stated many times that they did not wish to impede technological progress in their industry and that this is illustrated by the increased output per man hour. However, the unions objected to the proposed rules changes on the grounds that the new rules would undermine the safe and efficient operation of railroad equipment.²

This difference of opinion laid the groundwork for study commissions, boards of inquiry, and litigation which continued

¹"Railroads Ask 6 Basic Rules Changes," Railway Age (November 2, 1959), p. 9.

²George E. Leighty, "Railroad Propaganda Ignores the Facts," American Federationist (December, 1959), p. 4.

into 1964.

The Problem

Statement of the Problem

It is the purpose of this study (1) to compare the contentions of both parties from the viewpoint of a neutral observer interested primarily in the public's welfare, (2) to separate the exaggerations and propaganda from the actual situation, (3) to trace the complex legal procedures of the Railway Labor Act which caused railroad management and labor innumerable delays in their attempts at resolving their work rules dispute, and (4) to draw conclusions based upon the investigation.

Importance of the Study

In all major industries today increasing emphasis is being placed upon technological advances. Manual and semi-skilled jobs for workers are becoming scarce with the advent of automated equipment. Ivar Berg and James Kuhn in a related study pointed out that ". . . in the first half of 1959, the steel industry produced 6,000,000 tons more steel than in six months of 1955, with 31,000 fewer workers."³

Railroad management is of the opinion that because of its technological advances such as diesel engines, central traffic

³Ivar Berg and James Kuhn, "The Trouble with Labor is Featherbedding," Columbia University Forum (Spring, 1960), p. 22.

control, automatic switches, etc., it should dispense with the services of 40 to 60 thousand employees. They stated that these employees and outmoded work rules are costing the railroads an extra 500 million dollars annually, with the locomotive firemen accounting for nearly half of that figure.⁴

Industrial management and unions throughout the nation were interested in how the railroads solved their government, social, and union problems resulting from automation. Many aspects of the railroad conflict might become precedent setting in the field of labor-management relations. It would be difficult to underestimate the importance of this struggle by the railroad operating employees to retain their self-respect, livelihood, and seniority rights earned by years of labor on the railroad.

Definitions of Terms Used

Featherbedding

Webster's New World Dictionary defines featherbedding as, "The practice of limiting work or output in order to provide more jobs and prevent unemployment."⁵

The National Association of Manufacturers defines featherbedding as ". . . the practice of requiring the employment of persons

⁴ Morris A. Horowitz, "The Diesel Firemen Issue on the Railroads," Industrial and Labor Relations Review (July, 1960), p. 550.

⁵ Webster's New World Dictionary, College Edition (Cleveland and New York, 1955), p. 531.

whose labor is not needed . . . result[ing] from the feeling that a worker has a vested interest in his job."⁶

Norman Simler, an economist, defines featherbedding as ". . . a work rule which requires employer units to employ a larger quantity of labor of a specified type than would otherwise be employed at a given wage rate."⁷

Milton Edelman and Irving Kovarsky divide featherbedding into nine different subdivisions:

1. limiting the amount produced
2. controlling speed
3. controlling quality
4. requiring time consuming work methods
5. requiring unnecessary work or the redoing of work
6. requiring a particular number of employees to do a given job.
7. requiring the assignment of certain tasks to a particular union (jurisdiction)
8. forbidding employers or supervisors to perform work assigned to the union
9. retarding the introduction of machinery⁸

⁶Ivar Berg and James Kuhn, "The Assumptions of Featherbedding," The Labor Law Journal, (April, 1962), p. 278.

⁷Norman Simler, "The Economics of Featherbedding," Industrial and Labor Relations Review (October, 1962), p. 112.

⁸Milton Edelman and Irving Kovarsky, "Featherbedding: Law and Arbitration," Labor Law Journal (April, 1959), p. 239.

Railroad managements' references to featherbedding in this paper apply to the operating employees of the railroads, represented by (1) The Brotherhood of Locomotive Engineers, (2) The Brotherhood of Locomotive Firemen and Engineers, (3) The Switchmen's Union of North America, (4) The Brotherhood of Railroad trainmen, and (5) The Order of Railway Conductors and Brakemen.

Work Rules

This is a comprehensive term which refers to the rules issued by management covering employment, wages, and working conditions. Work rules changes are usually negotiated through the process of collective bargaining between management and the unions involved.

Mediation

This is the process by which two disputants meet with a third party called a mediator. The function of a mediator is to achieve a reconciliation between the two disputants. The mediator hopes to accomplish this by building on points of agreement and minimizing differences. The mediator can only suggest and point out areas of concessions for possible agreements; nothing the mediator states is binding to either party.

Arbitration

This process usually occurs after mediation attempts have failed. The two disputants summon a third party whose function it

is to weigh both sides of the dispute and reach a decision which is as equitable as possible to both parties. His decision is binding to both parties. Arbitration can either be voluntary or compulsory.

CHAPTER II

FACTORS WHICH LED TO THE ALLEGATION THAT FEATHER-BEDDING EXISTED IN THE RAILROAD INDUSTRY

In the early 1930's when the diesel locomotive was first introduced in the United States it was operated without the use of a fireman. It was not until 1935 that the Chicago, Burlington, and Quincy Railroad agreed to employ firemen on their passenger diesels. This decision eventually led to the adoption of firemen on the other railroads, and on February 28, 1937 the National Diesel Electric Agreement was negotiated requiring firemen on diesel locomotives.¹ Figure 1 illustrates the shift from steam power to diesel power.

The railroads have made prodigious technological strides in an effort to improve railroad service and better their financial position. Radio, teletype, centralized traffic control, and other advanced forms of communication are being used on today's railroads. Other innovations are larger freight cars, automatic weighing devices, consolidation of accounting functions, production line methods in equipment repair, consolidation of repair facilities, and a reduction in structure maintenance because of the present

¹Bernard Yabroff and William Kelly, "Employment Changes in Railroad Occupations," Monthly Labor Review (October, 1962), p. 1129.

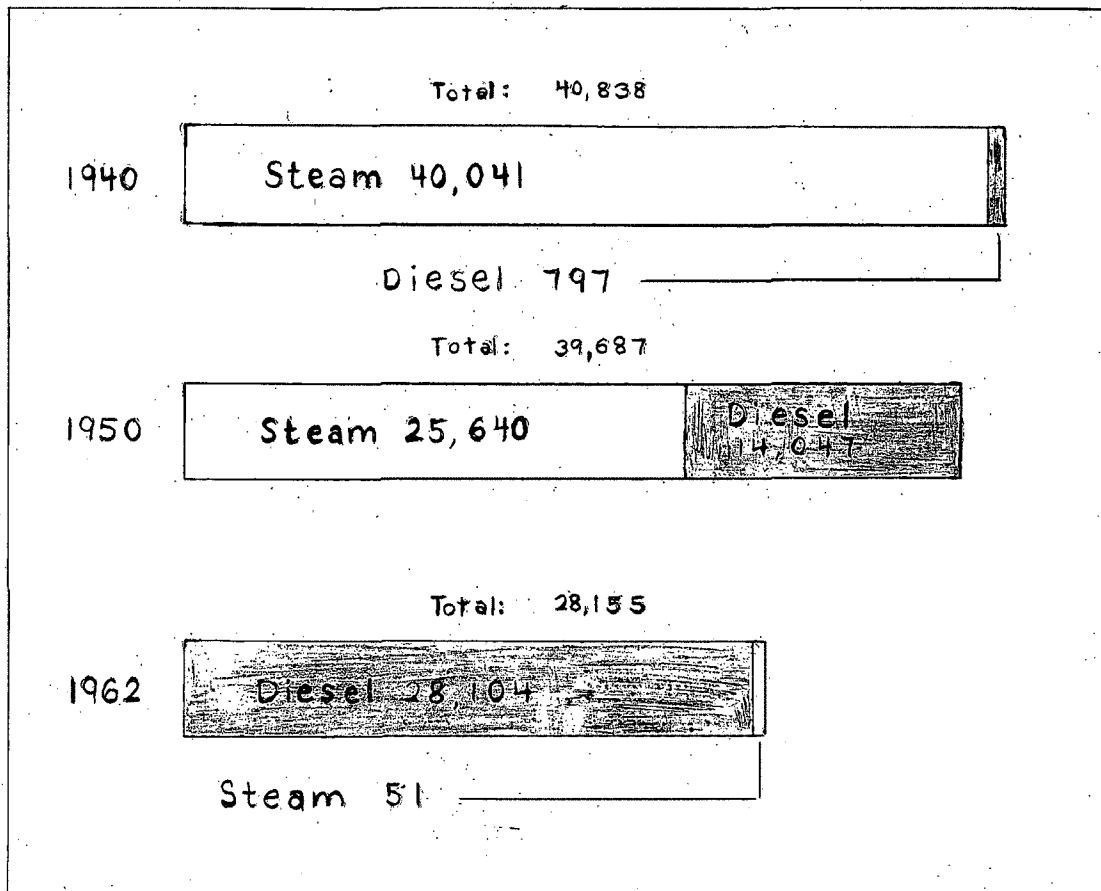


Figure 1.

SHIFT TO DIESEL ENGINES

(From New York Times, July 7, 1963)

need for fewer buildings. Clerical work is now done to a great extent by modern office machines and electronic data processing methods. From 1946 to 1960 capital expenditures by the railroads averaged more than a billion dollars a year.²

Despite these technological advances the railroads are losing a larger share of the transportation market every year. Other modes of transportation, often government subsidized, are pressuring the railroads into reducing costs, so that their margin of profit may be improved. Figures 2 and 3 illustrate the declining share of the market procured by the railroads.

Over the last sixteen years the number of railroad workers has decreased by fifty percent and is now down to approximately 700,000 workers.³ Figures 4 and 5 exhibit this in detail.

These facts point out how railroad labor and management relations were being strained from management's efforts to eliminate still further jobs and the unions' determination to protect the remaining jobs.

²Ibid.

³"Lumps in the Featherbed," Newsweek (March 18, 1963), p. 76.

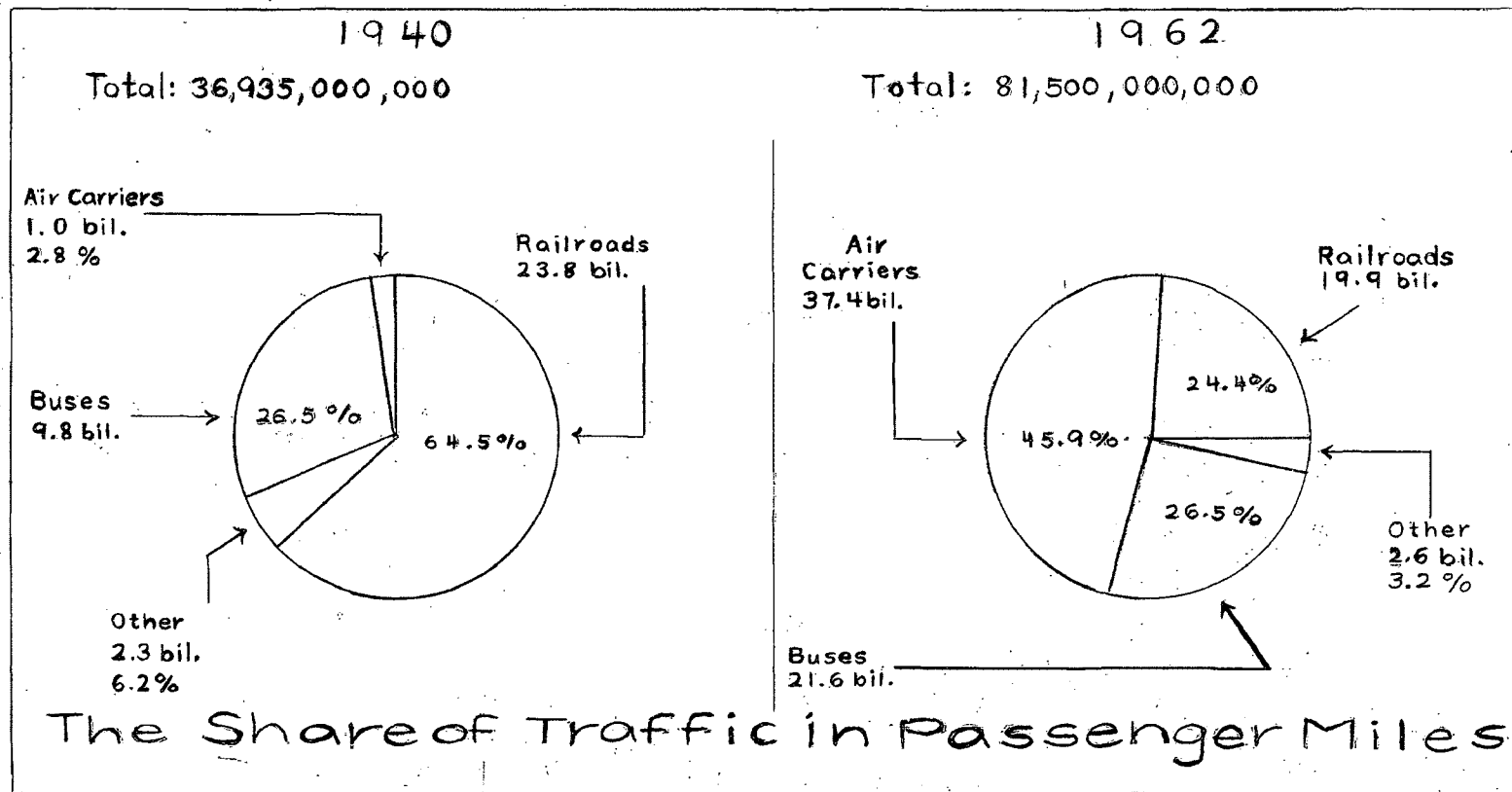


Figure 2.

(From New York Times, July 7, 1963)

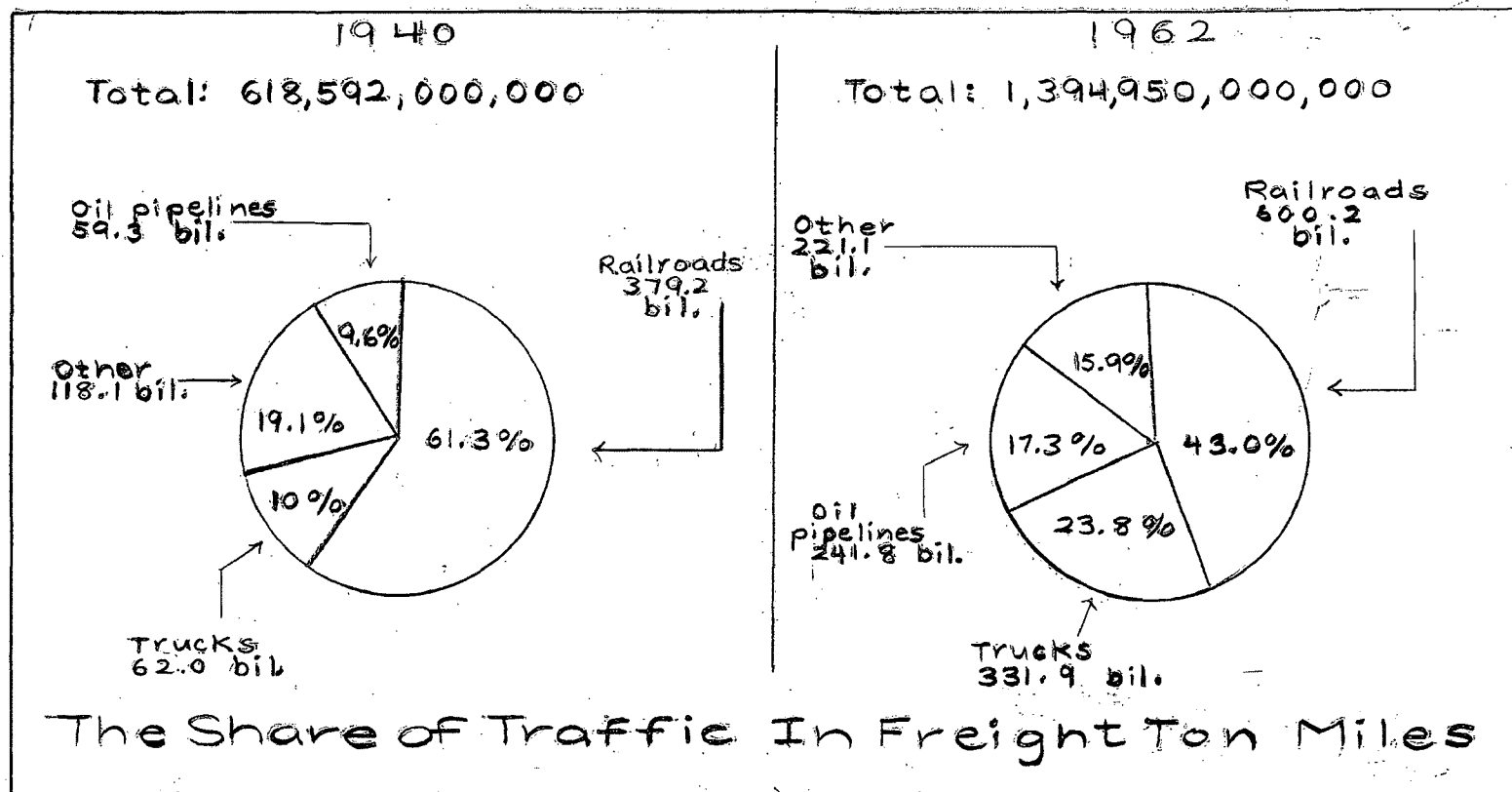


Figure 3.

(From New York Times, July 7, 1963)



The Drop in Railroad Jobs

Figure 4.

(From Fortune, January 1962)

Occupational group	Employment (thousands)		Percent Change
	1947	1960	1947-1960
Total Employees	1,352	781	-42
Maintenance of equipment and stores	370	184	-50
Maintenance of way and structures	265	119	-55
Transportation: Other than train, engine, or yard	172	91	-47
Train, engine, and yard	307	212	-31
Clerical	163	111	-32
Agents	36	32	-10
Executives, officials, and staff assistants	15	15	-1
Miscellaneous services	24	17	-27

Figure 5

EMPLOYMENT ON CLASS 1 LINE HAUL RAILROADS,
BY OCCUPATIONAL GROUP, 1947-1960

(From Monthly Labor Review, October, 1960)

CHAPTER III

FEATHERBEDDING FROM A MANAGEMENT VIEWPOINT

In most industries, proper management and technological advances result in increased profits; however, this does not hold true for the railroad industry. Figures released on employment and compensation reveal that extra profit is siphoned off by excess wages and inflation. Wages and the cost of materials represent the two largest drains on the railroad dollar. In 1963, sixty-one cents out of every dollar was expended in the form of wages and fringe benefits. Another twenty-six cents was spent for fuel, material, and supplies. Employee compensation has increased 136 percent since 1940 in spite of the fact that the number of employees has decreased to a 1963 employment level of 680,000. Furthermore, this pay increase does not reflect the costs of additional fringe benefits such as paid vacations and health and welfare programs. In 1963 alone the railroads paid 374 million dollars in payroll taxes to support retirement, unemployment, and sickness benefits, and an additional 135 million dollars for health and welfare programs.¹

The ratio of total wages and supplements to the value of

¹Daniel P. Loomis, "A Realistic Appraisal of the Railroad Industry's Future," The Commercial and Financial Chronicle (February, 1959), p. 67.

sales [revenues] for the railroads and other industry groups points out the burden of employment costs on the railroads. In 1962 the ratio for all railroads, including the Pullman Company and the Railway Express Agency, was 54.6 percent compared with 25.8 percent for manufacturing and 27.9 percent for communications and public utilities.²

In 1963, the railroads' revenue from operating properties was double that of 1940. Yet net income in 1963 showed an increase of only \$124 million or less than one-fifth over 1940. The railroads in 1940 earned a net rate of 3 percent on their investment; in 1963 with double the revenues, the return was but 3.1 percent.³

Railroad officials proclaimed that it was the union employees who had been benefiting from technological advances and not the stockholders who furnished the necessary capital. In the crash of 1929 rail stocks lost their value. It was not until the extraordinary traffic of World War II that the railroad stocks began to pay respectable dividends. Then in 1946, 1950, and 1955 railroad investments were down. Today the Southern and Western railroads are prospering, but Eastern railroads' profits are declining, and they need to cut cost and merge if they are to prosper.⁴

²Ibid.

³Ibid.

⁴"Featherbed v. Roadbed," National Review (August 28, 1962), p. 129.

No other major industry is as trapped in its own work rules as are the railroads; even the United Mine Workers are not resisting automatic devices and requiring excess crews. The demand for coal may not be increasing, but still the workers have jobs that they would not have now if they had hindered their industry's competitiveness. In the automobile industry employers reported that make-work practices have been non-existent. The steel industry reports that there has been no disposition on the part of its principal union to enforce featherbedding practices. Likewise, the successful barge lines that have been operating on our inland waterways reported that there have been practically no instances of featherbedding.⁵

Many of the work rules in use today date back to the era of steam powered locomotives. One such early rule still in existence states that two brakemen are necessary on each train. In those earlier days the train was stopped by these crew members racing along the tops of the cars setting hand brakes. This was well before the universal adoption of the air brake which the engineer controls with a minimum of effort.⁶

Another such rule still in effect is called the hundred-mile-day. In 1918 the average speed of freight trains was eleven miles per hour depending largely upon how well the hourly paid

⁵"The Trap," Railway Age (March 24, 1958), p. 20.

⁶Ibid.

Stinson kept the boiler stoked. It was during this time noted that William C. Coffey, Director General of the railroads, originated the hundred-mile-day rule. He stated that the finish's completion of a hundred miles constituted an eight hour day. If the train finished the hundred mile stretch before the completion of eight hours, the crew could go home. However, if it arrived after eight hours the crew normally received no overtime.⁵

The speed of today's diesel trains makes it possible for a passenger train even to complete its hundred miles in a time of three hours or less. Its railroad counterpart there are referred to as "fast of the west" and are a considerable improvement.⁶

Assume a hundred miles in a full day work.

... five times, ... are required to complete a 500 mile run from New York to Chicago, a trip that can be made in no time as 16 hours. The rate of mileage with pay three days' pay for air and a half hour of actual work to each car in the engine of a fast passenger train serving Chicago and other western points.⁷

In a situation where a five man crew is paid a total of \$100 it seems to do nothing. Even if that forced the railroad to withdraw an engine from service, but it would not withdraw the crew without the union's permission.⁸

⁵The President, National Convention Could Be a Working Point in Labor Relations, Business (January 1962), p. 145.

⁶Id.

⁷Exposure for 1962, The New York Times (January 7, 1962), p. 35.

⁸James E. Hutchinson, Washington Post, Washington Post (January 1962), p. 22.

In 1943 a referee awarded two trainmen an extra day's pay each for the few minutes of work they spent on a coupling job. The referee held that the switchman should have executed the job. Oddly enough, the same man, performing the same primary function, is often designated switchman one day and brakeman the next, depending upon whether he works in the yard "switching" or on the road "braking."¹¹

These are only a few of many cases on record which railroad management believes typifies the existence of antiquated work rules.

¹¹"The Trap," Railway Age (March 24, 1958), p. 19.

CHAPTER IV

THE UNIONS' VIEW OF THE FEATHERBEDDING ISSUE

The unions deny management accusations that featherbedding exists in the railroad industry. Union officials maintain that the term "featherbedding" was part of a propaganda attack by management to discredit their own employees in the eyes of the public.

Railroad managements often describe some of their employees as, "firemen who tend no fires and brakemen who set no brakes." Although the fireman no longer tends fires, there are certain functions which he is designated to perform. The fireman relays the switchman's signals to the engineer when the switchman is forced to signal on the left side of the cab, which is the blind side for the engineer.

The fireman is a safety lookout who watches for trespassers who may cause themselves injury; he also judges clearances on the left side of the engine in order to avoid possible collisions or side-swiping of other vehicles by the engine. On the road he is vigilant for any car defects, for instance possible fire from sparks or burning brakes. Furthermore, he repeats block signals from the Central Traffic Control to double check the engineer. In addition the fireman is capable of conducting safety checks on the diesels and making minor repairs while the train is traveling. Both in the yard

and on the road the fireman and engineer change jobs periodically, relieving the engineer of the onerous task involving the safety of the crew and millions of dollars worth of equipment. Besides these functions the fireman is receiving valuable training from the engineer so that one day he may qualify as an engineer.¹

Concerning brakemen who purportedly handle no brakes--union spokesmen point out that in 1954 three men were killed and 688 injured in the handling of hand brakes. In 1955 six men were killed and 793 were injured. In 1956 five men were killed and 863 injured.²

If a fireman or brakeman prevents a serious accident just once during his service with the railroad perhaps he is worth retaining. There are many cases on record where these employees have done just this. One such incident took place on a passenger train which operates between Salt Lake and Los Angeles. The fireman on one of his safety checks of the diesels discovered a fire in one of the diesels, and even though he was seriously burned in extinguishing the fire, he prevented a possible explosion which might have killed many people and caused millions of dollars worth of damage.³

Railroad management has grossly exaggerated the benefits

¹George E. Leighty, "Railroad Propaganda Ignores the Facts," American Federationist (December, 1959), p. 29.

²Ibid.

³H.E. Gilbert, "The Locomotive Fireman," American Federationist (January, 1959), p. 8.

accruing to employees from the hundred-mile-day rule. Management often cites examples in which a full day's pay is earned in a few hours on "red apple runs." Actually only one percent of railroad employees operate these runs and then only after being with the railroad for twenty-five to thirty years. Union figures point out that if the railroads paid their employees on a straight time basis similar to other industries, it would cost them \$647 million extra per year on the basis of 1957 employment. The average bricklayer earns thirty-four dollars per day while the average engineer and fireman earn twenty-two and eighteen dollars respectively. Therefore the hundred-mile-day in the railroad industry is not supposed to represent a day's work in the usual sense, but is a means of measuring units of work.⁴

The unions feel numerous carriers have failed to realize the improved productivity of today's railroad worker. Steam engines each required a crew of men, and often sections of the road demand three or four engines to pull the load. Today on diesels one crew can handle any size train. Furthermore, twenty years ago a seventy car train was considered large; today two hundred car trains are commonplace, and the cars are even greater in size.⁵

The unions advertised in The New York Times to disclose

⁴Leighty, op. cit., p. 5.

⁵"Firemen Survive Cutbacks," Business Week (May 16, 1964), p. 105.

their version of the railroad situation. In one advertisement they made the following comparison of the manpower requirements for moving 100,000 tons of freight between New York and San Francisco:

Method of Transportation	Man Days Required
Highway	43,416
Air (propeller)	36,708
Air (jet)	13,008
Water	11,158
Railroad	3,220 ⁶

Despite the railroad worker's increased productivity wage increases, working conditions, and fringe benefits have lagged behind other industries. Many railroad employees still do not receive overtime benefits or extra pay for night, Sunday and holiday shifts.⁷

The unions also dispute managements' contention that the railroads are in financial distress. Mr. Leighty states that

. . . in 1958, which was the year in which the railroads' payment had such a dark picture, the ratio of the railroads' net to gross was 6.3 percent. In other words, \$602 million. For the domestic airlines the ratio of net to gross was 3 percent for a net income of \$45 million. For the trucklines the ratio of net to gross was 1.4 percent or \$55 million.⁸

⁶The New York Times (August 12, 1962), p. E-12.

⁷A.E. Lyon, "Bokum Can't Hide Facts," American Federationist, (February, 1960), p. 14.

⁸G.E. Leighty, "Do the Railroads Need Relief from Discriminatory Federal Regulations," Congressional Digest (May, 1961), p. 143.

Figure 6 illustrates the reserve capital possessed by the railroads.

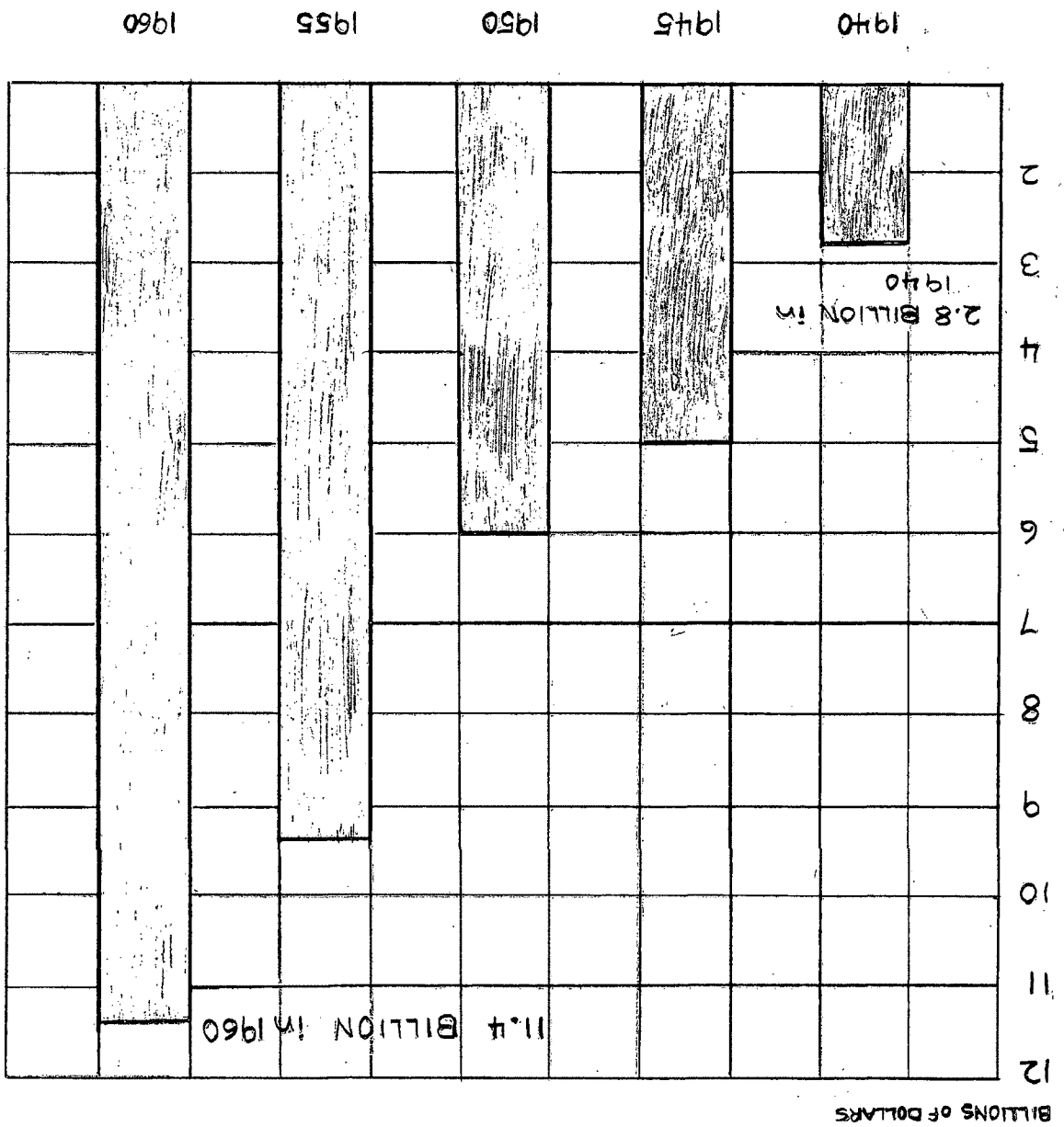
H.E. Gilbert, the president of the Brotherhood of Locomotive Firemen and Enginemen, summarized the unions' sentiments when he stated, "We can never forget that we are representing human beings, and management is representing money. There is a big difference. You can always mint more money. But you can't mint new lives."⁹

⁹"Railroad Talks Stay Off the Track," Business Week (May 19, 1962), p. 116.

Growth of Total Capital Surplus and Retained Income
1940-1960, U.S. Railroads

Figure 6.

(From Fortune, January 1962)



CHAPTER V

FACTORS WHICH MOLDED THE OUTCOME OF THE FEATHERBEDDING ISSUE

Legislation Attempts

There have been various attempts to control featherbedding by means of legislation. However, these enactments have been virtually ineffective.

Paul A. Weinstein states that legislation in this area is based upon two common law principles.

1. "The employer has the right to run his business as he sees fit without outside interference."
2. "He has the right to an unobstructed labor market."

These employer rights have been upheld in most court cases.¹

In 1946 the Lea Act or "anti Petrillo law" was passed to prevent the mandatory employment of unneeded musicians. The Act described the following as featherbedding practices:

1. Requiring a radio station to employ more workers than actually needed to perform its function.
2. Having to pay, "in lieu of giving employment."
3. "Paying more than once for services performed."

¹Paul A. Weinstein, "Rear Guard Action Against Technology," Challenge (May, 1963), p. 13.

4. "Paying for services . . . which are not to be performed."²

In 1947 the Taft-Hartley Act was passed; section 8-b of the act was for the purpose of preventing featherbedding. It defined featherbedding as ". . . an exaction, for services which are not performed or not to be performed." This section, however, was not effective because of the problem of determining the correct number of employees required for different employers and deciding who is best qualified to make this decision. Senator Murray objected to Section 8-b stating that, ". . . the chief danger in the provision is that it may restrict labor organizations in their attempts to combat speed-ups, to protect the safety and health of workers, and to spread the burden of unemployment." He was of the opinion that this problem could best be handled through the process of collective bargaining. Eventually the constitutionality of Section 8-b was challenged in the Supreme Court. In 1953 the Section was ruled constitutional, but the Court interpreted the Section in such a manner as to make it ineffective.³

There was not any featherbedding legislation in the railroad industry until 1963, and this will be discussed in Chapter VI. Now--

²Ibid.

³Milton Blalman and Irving Kovarsky, "Featherbedding: Law and Arbitration," Labor Law Journal (April, 1959), p. 238; and Paul A. Weinstein, "Rear-Guard Action Against Technology," Challenge (May, 1963), p. 14.

ever, the Railway Labor Act was instrumental in determining the outcome of the railroad featherbedding issue.

The Railway Labor Act was passed in 1926 in an endeavor to prevent nationwide rail strikes by charting guidelines for labor-management negotiations. But, like similar pieces of legislation, the procedures of the act were cumbersome, lengthy, and far from effective in their application; nevertheless, this was the structure which laid the groundwork for the featherbedding disputes. This legislation was conceived through negotiation between railroad management and labor. These men formed the basis of the Act by discarding and selecting with discernment certain sections of labor acts they liked and disliked. The result was a combination of Title III of the Transportation Act of 1920 (which was later repealed), the Howell-Barkley Bill, and the Newlands Act.⁴

The Railway Labor Act provides for a mediation board which consists of five members who are appointed by the President of the United States. On the board's own notion or at the request of either party, the board is authorized to mediate any dispute. If after mediation the parties still have failed to reach an amicable settlement, the mediation board is required to use its influence to persuade the parties to submit the dispute to arbitration. If the parties agree to arbitration a board of three members is to be established, with each side selecting a member, and a third member

⁴ Harry Jones, Railroad Wages and Labor Relations (New York: Bureau of Information of the Eastern Railways, 1953), p. 87.

to be selected by the first two members. If the two members cannot agree on a neutral party, he is to be selected by the mediation board. The arbitration board is empowered to make decisions only on the issues submitted to it. If the disputants will not arbitrate the issues after the mediation board has failed in its conciliation attempt, and the mediation board senses that a strike is imminent which would paralyze the nation economically, the board is instructed to notify the President. The President is then empowered to create a presidential emergency board, which has thirty days from its creation date to ponder the issues and submit its report to the President. After the President receives the report there is another thirty days of status quo, thus further delaying a threatened strike or lockout. Basically the Railway Labor Act resulted in the elimination of the Railroad Labor Board and a return to mediation and arbitration.⁵

Both management and union officials are in agreement that the Railway Labor Act is no longer accomplishing the purpose for which it was originated. Mediation attempts have become a mere formality and seldom produce settlements. Arbitration is rarely used because both parties must agree to it, so emergency boards have become commonplace and management feels that they accomplish very little. By 1958, 127 emergency boards had been authorized under the Railway Labor Act. From 1926 to 1934 there were eleven

⁵Ibid.

emergency boards created, but most people considered the Act successful at that time. From 1934 to 1940 there were only five emergency boards created and the Railroad Labor Act was considered extremely successful. After 1940 the Act suddenly seemed outmoded for our changing times; between 1940 and 1956 about 110 emergency boards were created, the average being about seven a year. The following are some of the reasons why so many boards were created:

1. The fact that disputants know an emergency board will be created before a national crisis is reached tends to impair collective bargaining at the lower levels.
2. Emergency boards are not the last step in settling a railroad dispute. The unions can still strike after the board issues its recommendations.
3. Unions' strike treats have usually resulted in gaining further concessions beyond the recommendations of emergency boards, often because of White House intervention.
4. The parties failed to arbitrate the issues.⁶

The most outspoken assailant of the Railway Labor Act has been John M. Budd, president of Great Northern Railroad who said,

Legislative procedures for labor relations in the railroad industry have been historic failures and have brought unrest and chaos . . . /but/ the same procedures nevertheless can be effective if their underlying purposes are recognized and asserted. It is important that the administration support its fact finding boards and make the present

⁶Jacob J. Kaufman, "Emergency Boards Under the Railway Labor Act," Labor Law Journal (December, 1958), p. 911.

Railway Labor Act work the way it's suppose [sic] to.
If this is not done the law should be changed or rejected.⁷

R.E. Davidson, Grand Chief of the Brotherhood of Locomotive Engineers, referred to government intervention resulting from the Act as a "two edge sword." "Labor," he contends, "seems to be getting out more and more often."⁸

The facts discussed in this chapter indicate that more modern legislation is necessary. However, the type of legislation required is a controversial subject and will be discussed in the conclusion section of this study.

Canada's Decision on the Fate of Its Locomotive Firemen

Canada's decision to eliminate her firemen had a profound affect upon our decision over the firemen issue. Railroad labor and management negotiations accomplished very little and eventually the issue went to a royal arbitration commission which ruled that, ". . . firemen are not required on diesel locomotives." All firemen presently working on the two Canadian railways were guaranteed their jobs until retirement. When a vacancy occurs because of transfer, death, or retirement the job is eradicated. This process is known as attrition.⁹

⁷"Railway Labor Act: Time for a Change?" Railway Age, (December 7, 1962), p. 17.

⁸Ibid.

⁹"Canada's Fireman-Off Story," Railway Age (August 13, 1962), p. 22.

The Potential Damage of a Railroad Strike

In negotiation proceedings between the unions and the carriers, the unions' foremost weapon has been its threat to strike. It is dubious whether the railroads could survive a strike throughout the nation. Even the possibility of a strike is detrimental to the railroad industry. During the see-saw battle over feather-bedding, the railroads frequently were menaced with the probability of a strike. Many shippers, becoming tired of gambling with their distribution system, began diverting business to the truck lines, trying to gain a foothold before the onslaught of a railroad crisis. One major shipper alone, switching from railroads to trucks, caused the railroads to lose the equivalent of six hundred carloads of business per week.¹⁰

Franklin D. Roosevelt Jr., Under Secretary of the U.S. Commerce Department, presented to Congress conservative estimates of what a strike would mean to the nation's economy. He stated that a strike would put 700,000 railroad employees out of work and after thirty days 6.5 million people would be unemployed. "At the same time," he continued, "the annual rate of Gross National Product would be down thirteen percent. It is estimated that the G.N.P.'s net unrecoverable loss would be twenty-five billion dollars or more." Our nation's defense system would be seriously imperiled. Bulky defense materials and weapons physically cannot be shipped by truck; neither troops nor their supplies could easily

¹⁰"Shippers Starting to Hedge," Railway Age (July 22, 1963), p.9.

be transported in bulk. It is estimated that thirty percent of the Defense Department's rail-routed traffic could not be diverted to other modes of transportation. Only ten to fifteen percent of the nation's present railroad shipments could be diverted to other transportation facilities because the other forms of transportation would then have an overwhelming amount of business with an insufficient number of vehicles. Some commodities such as certain minerals can only be shipped by rail if there is no highway to the mine. The coal industry and its markets would feel the strike blow instantly since steel plants and electric utilities require coal for their operations. Meat packing plants would be forced to close in a few days. Farmers would lose many crops for lack of transportation to markets, especially crops requiring refrigeration for shipment. Rayon manufacturing would cease because its major chemical component, carbon bisulfide, can be transported only by rail because of its hazards. Fifteen to thirty percent of all construction work would cease for lack of materials. Mail delivery would be delayed. The medical inventories in the hospitals could become dangerously under stocked after a few weeks.¹¹

Pressure brought to bear upon the government might never allow a strike to transpire, yet it is possible that such conditions could occur.

¹¹"Strike the Railroads, Paralyze the Nation," Railway Age (August 19, 1963), p. 9.

CHAPTER VI

CHRONOLOGICAL ACCOUNT OF THE MANAGEMENT-LABOR

FEATHERBEDDING DISPUTE

July 1937 to November 1960, the Beginning of the Featherbedding Dispute

Railroad officials commenced their first united effort against what they considered employee featherbedding in July 1937 at a meeting of the Association of American Railroads' Board which was composed of twenty railroad presidents. It was at this meeting that James Edward Wolfe, then an obscure Burlington vice president, instigated the beginning of an anti-featherbedding campaign which was destined to immortalize Wolfe in the annals of railroad history and affect the lives of thousands of railroad employees. During the meeting Wolfe pointed out that profits were decreasing and that make-work practices were siphoning the industry's strength to expand and compete with other modes of transportation. He said that weaker railroads were doomed unless concerted action was started to eliminate featherbedding. Wolfe was named chairman of a committee of six members to organize the railroads strategy in combating what they considered to be featherbedding.¹

¹Harvin Hugo Elm, "Master Strategist of the Railroad Settlement," *Harvard* (July, 1964), p. 164.

A most significant aspect of strategy was the expending of large sums of money by the railroads on public relations in an effort to gain public support for their cause. The unions accused the railroads of conducting the campaign not only to malign their employees, but to gain public sympathy for both federal and state aid, tax concessions, and permission to curtail certain unprofitable runs.²

Other railroad strategy was comprised of negotiations between the railroads and the five operating employee unions. Previously each union acted as a separate entity in negotiating with the carriers. However, since the featherbedding issue was common to all operating unions, the railroads insisted that all five unions participate in the proceedings. The Brotherhood of Locomotive Firemen at first objected to the arrangement because the firemen on diesel engines was the major issue involved, and there has been a record of traditional rivalry between the firemen's and engineers' unions. Eventually all the operating unions agreed to a united effort.³

The railroads had to decide whether or not to eliminate the 3,900 firemen on the passenger trains. The safety issue was a major problem; if the carriers moved to eliminate these firemen, the unions would surely state that the lives of the public were being

²"Railroad Propaganda Ignores Facts," Economic Trends and Outlook (September-October, 1959), p. 1.

³Morris A. Horwitz, "The Diesel Firemen Issue on the Railroads," Industrial and Labor Relations Review (July, 1960), p. 550.

jeopardized through the railroads' greed. If however, the railroads did not move to eliminate all firemen, the public might believe that the railroads were admitting the necessity for firemen. The Wolfe committee decided to leave firemen on the passenger trains.⁴ In February of 1959 Daniel P. Loomis, President of the American Association of Railroads, delivered a speech condemning featherbed practices in the railroad industry and requested a presidential study commission.

I am not attacking railroad labor. There is no more able and conscientious work force in any industry in the nation. I am, however, attacking and condemning the deadly rules our workers must work by . . . rules which are thoroughly un-American in concept and economically destructive in practice. . . . A half a million railroad jobs have been lost in the last dozen years. Unless we solve our internal and external problems, more thousands of jobs will go down the drain. No labor leader wants that. And neither does any railroad official. So I urge our brotherhoods to act with us to help reverse this disastrous trend. Let's wipe out featherbedding. Let's stop paying men for work they don't do. Let's stop dissipating our lifeblood in frustrating clashes over rules everyone recognizes as unsound and unfair. . . . Featherbedding by any definition is a net loss to all America. It puts pressures on our rate structure and bids up prices to all consumers. It is a handmaiden of the ruinous inflationary spiral. It helps impoverish and weaken the railroads, means fewer returns to investors and virtual freeze-out of the new equity capital needed to expand and improve. . . . It gnaws insidiously at our competitive position and ultimately destroys the very jobs it seeks to protect--both for railroaders and all those who depend on railroad purchases.⁵

The railroads wanted the unions to join them in requesting

⁴Zim, op. cit., p. 165.

⁵1959 Target: "Featherbedding," Railway Age (February 16, 1959), p. 9.

President Eisenhower to authorize a study commission. In June of 1959 the unions criticized management for requesting a presidential commission, saying that it would be a waste of the public's money. The unions denied that featherbedding existed and stated that management now wanted to further suppress the earnings of its workers and be allowed to cause widespread unemployment in an industry which already has a record number of unemployed workers.⁶

The Railway Labor Executive Association charged that if any featherbedding exists in the railroad industry, it is at the management level, not among the rank and file employees. There were 1,800,000 railroad employees in 1923, 16,000 of whom were at the management level. In 1958 railroad employment was half the 1923 level, yet management's total of 16,000 executives has remained almost constant.⁷

Guy L. Brown, Grand Chief of Locomotive Engineers, repudiated featherbedding accusations saying in part:

It is not strange that it is mud-slinging when employees point out a few of managements' shortcomings, but it is supposed to be a statement of fact when management charges employees with featherbedding because the employees insist that agreement made in good faith be complied with until changed in accordance with procedures set up in the Railway Labor Act? The current campaign to pin the featherbedding label on railroad employees is as vicious as it is deceitful. When the railroads of this country employ a public relations firm to do a special

⁶ Ibid.

⁷ Warren C. Waterhouse, "Featherbedding," Western Business Review (February, 1960), p. 23.

smear job on local employees, instead of bargaining in good faith, we have reached an all time low in labor-management relations.⁸

In September of 1959 President Eisenhower turned down the railroads request for a presidential study commission; he believed that collective bargaining would lead to a solution. Because of the President's decision, the carriers on November 2, 1959, presented the unions with a set of proposed work rules changes.⁹

In synopsis, managements' work rules provided for:

1. the unrestricted right to determine when and if a fireman should be used in freight and yard service.
2. a revision of the pay structure, which included pay cuts as high as twenty to thirty percent for road employees.
3. the right to "establish, move, consolidate, and abolish crew terminals."
4. the right to eliminate the arbitrary barriers between road and yard work. Freight train crews are to do some yard switching with no more extra pay for doing a few minutes yard work.
5. the right to determine the combination of employee positions that will be utilized for the different trains. Management reserves the right to add or eliminate any train crew position, be it conductors, assistant conductors, ticket collectors, baggagemen,

⁸"Bad Faith in Rules Fight," Railway Age (July 6, 1959), p. 9.

⁹"Deadline Near in Rail Rules Dispute," Business Week (June 29, 1963), p. 65.

brakemen, firemen, engineers, or switchmen.

6. no more paying crews to man self-propelled machines. Management has the unrestricted right to determine when, and which employees will be used on motor cars and self-propelled equipment.¹⁰

H.E. Gilbert, President of the B.L.F. & E., had this to say regarding managements' new work rules. "The proposals," he charged,

are proof that the railroad industry intends to maintain its record profit levels by shoving thousands of employees into unemployment lines. . . . The proposals rank as an inhuman affront to rail workers and their families and are totally unrealistic in the practical aspects of railroading. If the railroads won all they're seeking, entire rail communities would cease to exist. Rail employment--now at its lowest level--would sink even lower. Railroad workers would have to submit to corporate slavery and safe operation would be virtually non-existent.¹¹

In July of 1960 the unions changed their minds about a study commission. The unions now believed that they could correct what they considered management injustices. Specifically the unions wanted a shorter day, extra pay for holiday, Sunday, and night shifts. They also wanted a change in overtime rates. The unions wanted any changes in work rules to apply only to new employees and the findings of the commission not to be binding on either party. Because the unions' demands differed from managements',

¹⁰Railroad Work Rules (November 2, 1959), pp. 1-6.

¹¹"Rules Proposals Arouse Unions," Railway Age (November 9, 1959), p. 17.

Secretary of Labor James Mitchell was summoned in order to bring about a conciliation. Eventually the unions relinquished their demand restricting certain recommendations of the commission and the railroads conceded their demand that the commission's report be binding.¹²

Both parties were now in agreement that a presidential study commission was necessary and everyone hoped that the commission would make a significant contribution towards resolving the railroad situation.

The Presidential Railroad Commission

On November 1, 1960 President Eisenhower created the Presidential Railroad Commission. The Commission was composed of five management representatives, five union representatives, and five members representing the general public.¹³

Public Members

Simon H. Rifkind, (Chairman)
John T. Dunlop
Charles A. Myers
Francis J. Robertson
Russell A. Smith

Carrier Members

B.B. Bryant
T.A. Jernow
Guy W. Knight
Daniel P. Loomis
J.E. Wolfe

Union Members

James W. Fallon
S.W. Holliday
S.C. Phillips
H.F. Sites
A.F. Zimmerman

¹²Zim, op. cit., p. 166.

¹³Report of the Presidential Railroad Commission, February, 1962 (Washington, D.C.: U.S. Government Printing Office).

Chairman Simon N. Rifkind's illustrious background as a former U.S. District Judge, one of the authors of the Wagner Act, a former law partner of Adlai Stevenson, and his present position as New York lawyer furnish him with the prerequisites necessary for heading this distinguished Commission. The functions of the Commission were to investigate and study areas of dispute between railroad labor and management, in an effort to establish a basis for collective bargaining procedures.¹⁴

The Commission commenced work in January of 1961 and did not complete its study until February of 1962. In the course of this period the Commission held public hearings for ninety-six days. During the hearings seventy-nine witnesses appeared before the Commission and 155 additional statements were received from other witnesses. The Commission recorded 15,306 pages of transcript throughout the hearings; in addition there were 319 exhibits totaling 10,319 pages. A tripartite technical subcommittee also conducted twenty-two additional monographs to assist the Commission in its deliberations.¹⁵

In order to acquaint themselves with railroad operations, the public members of the Commission made railroad observation trips. These trips covered thousands of miles on passenger and freight

¹⁴"Kicking Some of the Stuffing Out of the Railroad Featherbed," Newsweek (March 12, 1962), p. 78.

¹⁵Report of the Presidential Railroad Commission, February, 1962, op. cit., p. 16.

trains, encompassing both main and branch lines, traveling over mountain, desert, plain, and valley terrain. Countless private meetings were conducted by the Commission with both labor and management representatives.¹⁶

The following represent the work rules changes that the unions and management desired to secure from the Commission's study.

Unions demanded:

1. a decrease in working hours
2. a guaranteed annual wage
3. overtime changes
4. extra pay for night duty
5. extra pay for working Sundays and holidays
6. away from home expenses paid
7. no changes in the number of men necessary for safe and efficient train operations

Management demanded:

1. that employee's pay be revised making it commensurate to the speed of today's trains
2. fewer crew changes on the road
3. elimination of artificial barriers separating yard work from road work
4. that crew-consist rules be eliminated, in other words, that management have the right to decide the number of men in a crew
5. an end to rules requiring employees to man self-propelled equipment
6. that the fireman be eliminated on yard and freight diesel engines¹⁷

In February 1962 the Commission completed its comprehensive study of the railroads' management-labor featherbedding disputes and reached the following conclusions:

¹⁶ Ibid.

¹⁷ "Board Asks End to Featherbedding," Railway Age (March 5, 1962), p. 9.

On the use of firemen.--The Commission stated that,

In the light of the preceding analysis, we conclude that firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on all such diesels.

However, the Commission did feel that the railroads have an obligation to men who have spent a significant portion of their working life as railroad employees and that those firemen who have over ten years seniority should be retained with full seniority rights by the railroads. The Commission was of the opinion that the 7,850 engineers over sixty-five should retire, to make room for more firemen promotions to engineers. The 18,000 firemen with under ten years railroad service should receive severance pay based upon years of service, with the process of attrition eliminating the other firemen. It has been estimated that a ten year period will be required for the 27,000 ten year seniority firemen to be reduced by attrition to the number required for passenger service. The Commission furthermore believes a joint committee between labor and management should be formed at some future period, to organize a training program for engineer trainees.

Consist of crews other than fireman.--The Commission believed that each railroad should solve this problem on an individual basis. If a railroad desires a change in the number of men currently comprising a crew it should negotiate the change with the unions; if after sixty days no agreement is consummated the change should be arbitrated. Moreover, the Commission was of

the opinion that full operating crews on self-propelled equipment are unnecessary.

Technological change.--Management should have the right to introduce technological changes whenever it so desires, according to the Commission. However, if the technological advance alters rules now in effect, negotiations must be conducted with the unions for sixty days, and if an accord is not achieved the issue should be arbitrated.

Wage structure.--The Commission recommended that the present limitation of sixteen continuous hours of duty be gradually reduced. Other pay recommendations were: pay guarantees for full time employees, a shorter work week for the yard engineers who are now working seven days a week, elimination of duplicate payments in road and yard work, and other technical changes in the pay structure.

Fringe benefits.--Regularly assigned employees should receive seven paid holidays, and employees who work these holidays should receive triple pay. The Commission also recommended that a night differential not be adopted. It did recommend that employees on the road should receive lodging and expense reimbursements.

Interdivisional runs.--The Commission said the length of runs should be adjusted to make them commensurate to modern operating capabilities, and alternating of crews should be at managements' discretion. Unneeded crew terminal facilities should

be closed, with displaced employees being compensated for moving expenses and loss of home values.

Lead and yard switching.--Lead service employees should perform a limited amount of switching and terminal work in connection with their own trains. Yard crews should be eliminated where the volume of work no longer warrants their employment.

Accompanying the recommendations of the Commission were 150 pages of dissenting reports from four of the labor representatives. The fifth union member, A.F. Zimmerman, said he would report directly to the President.¹⁸

Chairman Rifkind had this comment of the Commission's work:

Very early in the work of this commission, I discovered that we had a choice to make between a moribund industry destined to decline in importance, to decline in capacity, and to decline as an employer of labor . . . and [an industry] which was modern, which was fit and trim for competition with other modes of transportation.¹⁹

The railroads agreed with most of the Commission's report and considered it to be an excellent basis for a resumption of collective bargaining talks with the unions. The unions, however, considered the Report diametrically opposed to labor's interests and stated that the Commission's report reflected

. . . the combination of bias, ignorance, and insensitivity to the truth exhibited by the Eisenhower appointees.

¹⁸ Report of the Presidential Railroad Commission, February, 1962, pp. 411.

¹⁹ "Kicking Some of the Stuffing Out of the Railroad Featherbed," Harvard (March 12, 1962), p. 82.

Moonlighting, globetrotting, inattention to duty, failure to comprehend, lack of interest in learning were characteristic of this flag waving group.²⁰

The Commission's report played an important role in future railroad management-labor negotiations, but it is questionable whether or not the Commission's findings did anything to bring the parties closer to an agreement.

March 1962 - April 1963, a Period of Negotiations and Litigations

Labor and management representatives met on April 1, 1962 in order to discuss the Commission's report. The carriers were persistent in their position that the Commission's report be the basis for negotiations and the unions insisted that the report be set aside. This first meeting ended after ninety minutes of discussions with no apparent indications of progress.²¹

On April 17, 1962 talks were again under way; this time there were twenty meetings over a seventeen day period. Then the carriers in a news statement criticized the unions for their defiance of the Presidential Commission and lack of public responsibility. Talking was over as far as the carriers were concerned. J.E. Wolfe referred to the negotiations as, "a travesty on the collective bargaining process." He said any

²⁰"Unions Reject Early Parley on Work Rules," Railway Age (March 12, 1962), p. 9.

²¹"Work Rules Parley Recessed," Railway Age (April 9, 1962), p. 42.

further meetings would only delude the public. The unions, however, expressed "shock" at the carriers refusal to continue the discussions. According to the unions, the first fourteen days out of seventeen were occupied discussing carrier proposals and only the last three days bargaining union proposals. The unions stated that they were still willing to negotiate a settlement.²²

On May 22, 1962 the unions requested the assistance of the National Mediation Board, and meetings were once again resumed. But, as of June 22, 1962 no conciliation had been reached, and the carriers once more withdrew from further negotiations. The carriers were of the opinion that in spite of the "sincere and untiring efforts of the Mediation Board" no progress was in sight, and prolonging the present endeavors would be fruitless. J.E. Wolfe, chief railroad negotiator, accused the unions of utilizing stalling tactics and said that the unions have no intention of ever using the Presidential Commission's study to reach an understanding. Charles Luna, president of the Brotherhood of Railroad Trainmen, denied the charge and said that the unions' only desire was to expeditiously bring the dispute to an "equitable settlement."²³

On June 27, 1962 the National Mediation Board offered to arbitrate the dispute. If either the carriers or the unions

²²"Carriers Break Off Work Rules Talk," Railway Age (May 21, 1962), p. 9.

²³New York Times, June 23, 1962, p. 1, col. 4.

rejected the offer, the carriers would then have been free to effect their rule changes; the unions could then have started a national railroad strike. If both parties had accepted voluntary arbitration, the matter would have been resolved.²⁴

On July 7, 1962 J.E. Wolfe, leader of the carriers negotiating team, announced that the carriers would accept arbitration. However, the unions rejected the Mediation Board's offer. Thus the carriers issued a promulgation that on August 16, 1962 the railroads would put the Commission's report into effect.²⁵

On July 27, 1962 the unions went to the U.S. District Court for the Northern District of Illinois in an attempt to have the carriers' promulgation notice declared invalid and in violation of the Railway Labor Act. The unions were granted a temporary injunction to restrain the carriers, pending a later court hearing on a permanent injunction. The railroad operating unions were expected to strike if they were unsuccessful in court.²⁶

On August 7, 1962 the carriers, in an effort to force the creation of a presidential emergency board and avoid further drawn out court action, withdrew their July proposals based on the Commission's report and revived their more stringent 1959 work

²⁴New York Times, June 28, 1962, p. 19, col. 1.

²⁵New York Times, July 7, 1962, p. 1, col. 3.

²⁶"Court Battle Looms In Work Rules Case," Railway Age (July 30, 1962), p. 9.

rules proposals.²⁷

The unions went back to court and on August 6, 1962, U.S. District Judge Joseph Samuel Perry ruled against the brotherhood's case attempting to curtail management's implementation of the work rules. This immediately resulted in the unions beginning the strike preparations for a concerted walkout if the carrier proposals were instigated on August 16, 1962.²⁸

During the second week in August the unions carried their case to the Court of Appeals, which granted them another temporary injunction against the carriers. It was to be valid until the Court of Appeals had time to rule on the case. The unions had thirty days to present their case after which the carriers had thirty days to present their case. This was to be followed by twenty days for another reply by the unions. At this point the unions' strategy seemed to be one of delaying tactics, while railroad management was imploring the President of the U.S. to authorize an emergency board to help end the dispute.²⁹

On November 29, 1962 the Court of Appeals ruled against the unions and upheld the lower court's decision that the carriers were within their legal rights in changing the rules. The unions

²⁷New York Times, August 7, 1962, p. 1, col. 1.

²⁸"Op' Unions Wage Last Ditch Fight," Railway Age (August 13, 1962), p. 9.

²⁹New York Times, August 11, 1962, p. 1, col. 5.

remained split as to whether or not they should continue further litigation. One official of the Trainmen's Union stated that the unions would carry the dispute to the Supreme Court if necessary; other officials of the unions were ready to resume discussions at the bargaining table. They reasoned that every court defeat crippled the unions' cause and that the delay was not worth the risk.³⁰

The brotherhoods decided to take the fight to the Supreme Court, but in preparing their case for presentation they discovered what they considered to be discrepancies and errors in the Appellate Court hearing. Generally, their belief was that the decision went beyond the evidence presented; these discoveries resulted in the unions changing their minds about the Supreme Court and in their deciding to petition for a Court of Appeals rehearing. A rehearing, however, was denied by the Appellate Court, and the unions decided to petition the Supreme Court once again. The unions felt that all they needed was a favorable Supreme Court decision to alleviate their problems. Several weeks would pass before the unions would know whether or not the Supreme Court would accept the case. The brotherhoods based their appeal on four points:

1. The appellate court denied [the unions] procedural due process of law in violation of the Fifth Amendment to the Constitution . . . by admittedly considering disputed evidence to determine facts which were never put in issue or tried.

³⁰New York Times, November 29, 1962, p. 1, col. 1.

2. The case presents what is probably the most important issue that has yet arisen as to the interpretation and application of the Railway Labor Act.

3. Since the Appellate Court based its decision on the view that subjects dealt within the carriers rules promulgation are not covered by the Railway Labor Act, it presents an important question of federal law.

4. The yard and road portion of the carriers' proposals allowing road personnel to do switching would result in the eventual obliteration by the carriers of the entire basis for the existence of the Switchmen's union. . . . The question of whether under the Railway Labor Act such destruction of established crafts . . . may legally be accomplished by unilateral carrier decree is an important question requiring decision.³¹

On March 4, 1963 the Supreme Court upheld the verdict of the lower court and refused to accept the case. The Court's decision was very disconcerting to the unions. Many of the leaders in the unions now favored a resumption of talks in an attempt to make the best of a worsening situation.³²

A March 13, 1963 meeting between labor and management was held in Chicago, Illinois. It was at this meeting that the unions offered to make their first major concession. H.E. Gilbert, president of the B.L.F. & E., proposed a plan for reducing twenty percent of the 45,000 firemen through the process of attrition. However, J.E. Wolfe denounced the plan, saying it was so fraught with exceptions that it would be useless especially since the

³¹"Ops File Rules Plea With Supreme Court," Railway Age (January 7/14, 1963), p. 10.

³²New York Times, March 5, 1963, p. 1, col. 8.

union had to approve each job blanked.³³

On April 2, 1963 the Court injunction barring the railroads from putting the rules changes into effect, officially expired. Wolfe said the work rules would be enacted at 12:01 a.m. April 8, 1963.³⁴

This latest action by the railroads forced President Kennedy to authorize an emergency board, thus barring rules changes or strikes.

Emergency Board No. 1st

On April 3, 1963 President Kennedy, under the provisions of the Railway Labor Act, created a three man emergency board to study the railroad controversy. The Emergency Board was scheduled to begin its arduous task in Washington on April 11, 1963. The trio was composed of: Samuel Rosenman - Formerly a justice in the New York Supreme Court and special advisor to Roosevelt and Freeman, he is presently a New York lawyer who has been a member of numerous boards and committees. Clark Kerr - He has been president of the University of California at Berkeley since 1958 and is a highly respected west coast arbitrator. Nathan P. Feinsinger - He was past chairman of the Wage Stabilization Board, has twenty years experience in the labor-management field, and for the past few years has been a law professor at the University of Wisconsin.³⁵

³³New York Times, March 16, 1963, p. 4, col. 8.

³⁴New York Times, April 3, 1963, p. 27, col. 1.

³⁵"J.F.K. Acts in Rules Case," Railway Age (April 8, 1963), p. 9.

On May 13, 1963 Emergency Board No. 154 submitted the following recommendations to President Kennedy:

Firemen.--The board was of the opinion that this area of disagreement between management and labor had been narrowed to the point of discerning which firemen should be eliminated. The Board suggested a system whereby each fireman position the carriers want to eliminate, be negotiated and if necessary arbitrated. They said that no yard diesel should be operated without a fireman unless the engine is equipped with a "dead man's control." Regarding the individual firemen per se, the Board suggested that no new firemen be hired. Recently hired firemen should be laid off with severance pay based on their earnings. The remaining firemen with less than ten year's seniority should retain these rights, unless or until offered a comparable job for which they are or can become qualified. Those firemen with over ten years experience should retain full firemen rights.

Crew consist.--This was essentially a local problem which could best be handled at the local level, according to the Board.

Manning of self-propelled vehicles.--The Board said that all extra operating employees on these should be eliminated.

Interdivisional runs.--The Board felt that management should have more flexibility than at present to determine the length of runs.

Combination of road and yard service.--The Board said that

there should be more flexibility in the use of yard and road crews, but basic distinctions should be preserved.

Commission.--The Board stated that the pay structure should be completely revised.³⁶

The major difference in recommendations between Eisenhower's Commissions and Kennedy's was that Eisenhower's Commission recommended eliminating all firemen with less than ten years seniority, while Kennedy's called for dismissal of only recently hired firemen.³⁷

A. Resolving after Wirtz, May 1963 to May 1964

Railroad labor and management met in Washington D.C. on May 20, 1963 to discuss the Board's findings. James Reynolds, Assistant Secretary of labor, was assigned to assist in the discussions. The primary topic of conversation was the fireman issue, as the unions were being pressured from a building up of congressional support for a compulsory arbitration bill to head off a strike threat. On June 18, 1963 the Emergency Board's provision for negotiations elapsed, and the carriers would have been free to put their changes into effect, except that Wirtz requested a five day extension which was granted. President Kennedy later requested an extension through July 10, 1963 which was reluctantly granted. President Kennedy, as well as management and labor, was tired from the endless rounds of

³⁶ Recommendations of Presidential Board No. 152, Established April 3, 1963.

³⁷ "Will It Be Compulsory Arbitration On the Railroads?" U.S. News and World Report (July 1, 1963), p. 76.

deadlines and postponements. The President declared, ". . . only the critical, crucial nature of the basic issues involved--especially the replacement of men by technology--justifies this at all."³⁸

On July 5, 1963 Secretary of Labor Willard Wirtz in a statement to the parties suggested a proposal to the effect that Assistant Secretary of Labor, James J. Reynolds, arbitrate the dispute, with his decision to be binding for a two year period. Mr. Wirtz said he wanted his answer no later than July 7, 1963. On July 7 the carriers accepted and the unions rejected the proposal.³⁹

On July 9, 1963, President Kennedy requested that the parties submit their dispute to Arthur J. Goldberg, Associate Justice of the Supreme Court, for arbitration. The President requested the parties to advise him of their response by 10:00 a.m., July 10, 1963. The rules changes and corresponding strike were scheduled for 12:01 a.m. July 11. Once again the carriers acquiesced and the unions refused the proposal. H.E. Gilbert said "the brotherhoods objected not to Goldberg, but to any form of arbitration."⁴⁰

On July 10, 1963 President Kennedy asked the parties to

³⁸"RR's To Effect Rules Changes," Railway Age (July 8, 1963), p. 10.

³⁹Brotherhood of Locomotive Firemen and Enginemen, Office of the President, Monthly Bulletin (July, 1963), p. 189.

⁴⁰Ibid.

withhold any rules changes or strike notice until July 29, 1963. He informed the parties that he was appointing a special six man committee, composed of Willard Wirtz, Luther Hodges, George Harrison, Stuart Saunder, George Meany, and Joseph Block to study the dispute and suggest a solution.⁴¹

News analysts at that time predicted that the President could pursue any one of four alternative courses of action:

1. Government seizure of the railroads - This would not have solved the labor dispute, only shifted the burden to the government. This prospect was favored by the unions, but caused much fear among railroad management. J.E. Wolfe, in a public statement said that it would be unfair for the railroads to lose control of their organization after they had acquiesced with the recommendations of every commission and government proposal.

2. Compulsory arbitration - President Kennedy could have asked Congress for a "one shot" compulsory arbitration bill, thus forcing a railroad settlement. Railroad management favored this approach while the unions were of the opinion that such a bill would set a precedent which would affect the future of the collective bargaining process.

3. Let the strike occur - The incipience of a strike would have resulted in a public furor which would have forced a compromise in a few days.

⁴¹Ibid.

4. Revise the Railway Labor Act - The President could have asked Congress to make drastic changes in the Act curbing strikes on a national basis or changing the collective bargaining process.⁴²

On July 22, 1963 President Kennedy, based on the findings of the six man study board, asked Congress to compel the parties to settle their dispute under the auspices of the Interstate Commerce Commission. The plan called for railroad labor and management to submit to the I.C.C. their proposals and counter proposals regarding the work rules. The I.C.C. then had 120 days to accept any rules or to write substitutes. The unions could not strike, nor could the railroads put their own version of the rules into effect for a two year period. During the truce, negotiations were to continue. If any rules agreed upon differed from the I.C.C. rules, the negotiated rules would prevail.⁴³

The carriers said that they would be willing to follow the provisions of President Kennedy's plan. The unions presented to Congress a formal denunciation of the plan. The unions pointed out that in May of 1959 the I.C.C. conducted a railroad investigation because of declining passenger traffic. In their report they stated that railroad labor was responsible for many of the railroads' financial difficulties. Commenting on this report to

⁴²"Deadline Near In Rail Rules Dispute," Business Week (June 29, 1963), p. 65.

⁴³Brotherhood of Locomotive Firemen and Enginemen, Office of the President, Monthly Bulletin (July, 1963), p. 189.

Congress Mr. Davidson, Grand Chief of the B.L.R., said, "the Commission . . . attacked railroad labor as shortsighted, stubborn and as adhering to outmoded provisions of wage agreements. . . . In short the I.C.C. has already decided the merits of the very issues which the resolution, if enacted, would entrust to their consideration."⁴⁴

The July 29, 1963 deadline was canceled to await Congress's decision on President Kennedy's plan which was eventually killed. Railroad management set another deadline, this time August 29, 1963. Few people had any hope of an accord being reached before the deadline. Proposals were submitted to Congress for new commissions and study boards, but they did not materialize.⁴⁵

The last thing any Congressman wanted was to vote for a compulsory arbitration bill and offend the labor unions throughout the nation, but as of August 27, 1963 nothing had been received; a reluctant politically minded Congress was forced to act. They watered down a compulsory arbitration bill by restricting it to the firemen and crew consist issues. Congress felt that once these major stumbling blocks were removed, the so-called secondary issues could be settled by collective bargaining. Public Law 88-108, the official title for the arbitration bill, was

⁴⁴"Will Unions Lose Rail Dispute?" U.S. News and World Report (August 5, 1963), p. 89.

⁴⁵Brotherhood of Locomotive Firemen and Enginemen, Office of the President (August, 1963), p. 222.

rammed through the Senate by a margin of 90 to 2 on August 27, 1963 and expeditiously cleared the House by a vote of 286 to 66 the afternoon of August 28, 1963. The President signed the bill into law that evening, just six hours before the rail strike was to commence. The carriers hailed the action of Congress as "timely and constructive handling of this crucial legislation." The unions referred to the legislation as "regrettable and a backward step in the preservation of the rights of workers."⁴⁶

The arbitration was to be conducted by a seven man board. Two members were to be chosen by management and two by labor. These four men were then to choose three "public" members. The arbitrators were:

For the Unions - W.E. Gilbert, President B.L.F. & E.
R.H. McDonald, Vice President, B.R.T.

For the Carriers - J.E. Wolfe, Chairman of the National Rail and Labor Conference Committee.
Guy W. Knight, Chairman of the Eastern Carriers Conference Committee

Public Members - Ralph T. Seward, veteran arbitrator
James Healy, Harvard professor
Benjamin Aaron, director of the Institute of Industrial Relations at U.C.L.A.⁴⁷

The Panel had sixty days to reach a solution, and it would be another sixty days before the solution would be effected. The findings of this board were to be binding upon the parties for a

⁴⁶"Rules Dispute Goes to Arbitration," Railway Age (September 2, 1963), p. 9.

⁴⁷Letter to the Brotherhood from President H.E. Gilbert (September 2, 1963), p. 9.

two year period.⁴⁸

On November 26, 1963 the arbitration board announced its decision that eventually ninety percent of the firemen were to be eliminated. The first phase of the Board's decision was to begin on January 25, 1964 when all firemen hired within the last two years were to be released from their jobs. H.E. Gilbert that same day announced that the unions were going to court in order to challenge the constitutionality and the validity of the award.⁴⁹

The January 25, 1964 cut-off date for firemen was delayed because of the unions' court appeal. A decision on the case in the Washington D.C. Court of Appeals was expected sometime in February.⁵⁰

On February 28, 1964 the Court upheld the arbitration award. The unions announced that they would contest the decision in the Supreme Court. The railroads agreed not to commence laying off workers until the Supreme Court decided whether or not to accept the case.⁵¹

The Supreme Court was expected to announce its decision sometime in April 1964; meanwhile the unions changed their work

⁴⁸"Deciding On The Featherbed," Business Week (September 28, 1963), p. 67.

⁴⁹"Firemen: Down But Not Out," Railway Age (December 2, 1963), p. 10.

⁵⁰"Work Rules New Delay," Railway Age (January 27, 1964), p. 9.

⁵¹"Unions Switch Tactics Again," Railway Age (March 16, 1964), p. 40.

rules strategy. Being unsuccessful on the national level, the unions decided to negotiate the so-called secondary issues on a local level with individual carriers. The Southern Pacific and the Louisville & Nashville railroads were selected for test cases. The unions spent over \$20,000 in newspaper ads placed in eleven metropolitan papers along the routes of the two carriers. The ads read in part:

If you were a railroad operating employee, how long would you put up with work rules like these? No paid holidays, long hours, inadequate overtime pay, inadequate lodging and no meal allowances for required away from home stays, no extra pay for added night hazards.⁵²

Many people were of the opinion that the unions' strategy was to negotiate favorable work rules with these properous railroads and then extract similar agreements from other railroads. However, the Southern Pacific and the Louisville & Nashville refused to negotiate directly with the unions.⁵³

The unions threatened to strike at 12:01 a.m. April 10, 1964. President Johnson summoned railroad unions and management leaders to Washington for a conference. He told the railroads that since they gave President Kennedy an opportunity to resolve the disputes the least they could do was to give him a chance also. President Johnson requested a twenty day postponement, but the

⁵²"Unions Switch Tactics Again," Railway Age (March 16, 1964), p. 40.

⁵³Marvin Hugo Zim, "Master Strategist of the Railroad Settlement," Fortune (July, 1964), p. 247.

unions granted him fifteen days. The theoretical deadline was now April 25, 1964.⁵⁴

President Johnson selected a five man team to mediate the bargaining sessions between management and labor. The team was composed of:

George Taylor - of the University of Pennsylvania

Theodore Kheel - a New York mediator

Willard Wirtz - Secretary of Labor

James Reynolds - Assistant Secretary of Labor

Francis O'Neill - National Mediation Board Chairman⁵⁵

At this point, the following courses of action might have been pursued:

1. The President's mediators could have convinced the disputants to reach an agreement.

2. If the talks failed, the President could have threatened the parties with an expressed or implied "or else" which would have resulted in more talks.

3. If the talks failed he might have requested Congress to bar a railroad walkout.⁵⁶

Many observers felt that the unions' and managements'

⁵⁴"Another Strike, Another Truce," U.S. News and World Report (April 20, 1964), p. 77.

⁵⁵"Johnson Swings a Red Lantern," Business Week (April 18, 1964), p. 25.

⁵⁶Ibid.

representatives did not want to settle the dispute for fear that concessions granted would cause them loss of votes or similar reprisals from their respective constituencies. President Johnson realized this when he made a public statement just before commencement of negotiations, saying, "The principal question is whether these bargainers can, in fifteen days, get over four years of the idea of somebody else settling their disagreements for them."⁵⁷

President Johnson was a frequent visitor during negotiations, often giving patriotic talks to the disputants on their responsibility to their nation. His talks also carried undertones of seizure, arbitration, and retaliation. Still the talks seemed to drag on. As his next move the President conducted a few private talks with the management representatives. He was reported to have told the management representatives that it was up to them to secure a settlement and ". . . if I can help you make up the cost someplace else, I will do what I can." This was not meant as a firm commitment but the implication was clear.⁵⁸

There are many areas in which the railroads desire government concurrence. The railroads have four billion dollars invested in recent tunnel and grading improvements which the Internal Revenue Service will not allow them to depreciate. The railroads are

⁵⁷David Lawrence, "Permissive Anarchy," U.S. News and World Report (April 27, 1964), p. 124.

⁵⁸"What Railroads Want From L.B.J. Now," U.S. News and World Report (May 11, 1964), p. 95.

protesting this, stating that they could save twenty to thirty million dollars a year in taxes. Other areas of government concurrence might be in allowing the railroads to reduce their rates on certain freight, and sanctioning proposed rail mergers.⁵⁹

On April 22, 1964 a conciliation was finally reached by the disputants, just three days before the April 25, 1964 deadline.

The settlement provisions were:

1. The hundred-mile-day is to remain the basis for computing wages.
2. Seven paid holidays for employees were authorized.
3. Railroad yard employees are to receive pay increases.
4. Employees are to receive suitable lodging and meal allowances when on the road.
5. There is to be some combining of road and yard work as authorized by the previous Presidential commissions.
6. There would be gradual elimination of 45,000 rail jobs if the Supreme Court denies a hearing.
7. They agreed that there should be no night differential.
8. They ruled against the existence of excess crews on self-propelled equipment.⁶⁰

On April 27, 1964 the Supreme Court refused to review the constitutionality of the arbitration award. The railroads as of

⁵⁹Ibid.

⁶⁰"The Rail Settlement: A Coup for L.B.J.," Newsweek (May 4, 1964), p. 67.

May 7, 1964 laid off approximately 5,500 firemen, including the writer of this thesis. These were men hired within the last two years. The remaining firemen with over ten years seniority will retain their full rights as firemen with ninety percent of their jobs eventually blanked by attrition.⁶¹

The question perplexing railroad officials is, what will happen in 1966 when the arbitration award effective period expires? B.L.F. & E. President Gilbert indicated that the union will want every job blanked by the carriers restored. He estimated there would be approximately 8000 jobs blanked over the two year period.⁶²

State Full Crew Laws

Another imposing railroad industry problem is that of state full-crew laws. Nationally an agreement between the carriers and unions eliminating firemen is suitable for states not possessing full-crew laws, but some of our states have laws determining the number of men in train crews. A Great Northern Railway freight train operating between St. Paul and the west coast has a normal crew of a conductor and two brakemen. However, both North Dakota and Washington require a third brakeman. Thus trains must stop on the borders of these states, pick up a brakeman and then continue on to the border where the third brakeman is

⁶¹"High Court Shuts The Last Door," Railway Age (May 4, 1964), p. 12.

⁶²"Firemen Survive Cutbacks," Business Week (May 16, 1964), p. 105.

deposited because he is not required in the next state. There is a run between Williston, North Dakota and Bainville, Montana covering thirty-eight miles, for which an extra brakeman must be added. It usually takes an hour and a half to complete this run, but the extra brakeman receives a full day's pay.⁶³

In California 1,200 extra railroad men are working because of these laws. The president of one major eastern railroad noted that crew laws in three states deny the railroad about eighty percent of the relief the arbitration award would otherwise provide. Figure 7 illustrates the states which have full crew laws. The railroads now have litigation pending in some of these states to have the laws repealed.⁶⁴

⁶³Jules Backman, "The Size of Crews," Labor Law Review (September, 1961), p. 805.

⁶⁴"What Railroads Want From L.B.J. Now," U.S. News and World Report (May 11, 1964), p. 12.



The Nation's Train-Crew Laws at a Glance

Figure 7.

(From Railway Age, January 6, 1964)

CHAPTER VII

CONCLUSIONS

The years 1959 to 1964 were eventful in the field of railroad labor-management relations. On November 2, 1959 railroad management commenced its campaign against featherbedding by promulgating work rules changes. This caused immediate defensive statements and accusations from the unions. The very nature of bargaining in the railroad industry had much to do with accelerating the railroad crisis. Morris Horowitz, in the Labor Law Journal, explains why in the railroad industry there is often a strained relationship between railroad management and labor:

The railroad industry has a unique system of collective bargaining. The labor agreements have no terminal points. At practically any time, negotiations or changes in the agreements may be started. For the railroad management to demand various changes in the working rules would undoubtedly harden the union's opposition to any change.¹

Thus the unions could never relax their defenses long enough to actually work with management for the betterment of the railroad industry.

Norman Simler, an economist, states that there are two basic sets of alternatives that the union can use when it bargains

¹ Morris A. Horowitz, "Labors' Role In The Declining Railroad Industry," Labor Law Journal (July, 1958), p. 473.

with management. The union can (1a) demand a given wage rate and allow the employer the choice of the quantity of labor it desires to employ at the fixed rate. (1b) The union could demand a fixed quantity of employment and allow the employer to set the wage at which this given quantity of men would be employed. (2) The union could decide to fix both the wage and (a) either the quantity of labor employed or (b) the proportion of labor to other factors of employment. Simler states that featherbedding occurs only if number two is adopted because the employer is faced with an "all or nothing deal."²

In the railroad bargaining sessions, the unions originally desired to maintain their set wage and all firemen. However, eventually, H.E. Gilbert proposed a plan eliminating twenty percent of the firemen. The arbitration award calls for the elimination of ninety percent of the firemen. Perhaps the unions would have been wiser at the beginning of the bargaining sessions to have admitted that some firemen were unnecessary and to have accepted a decrease in pay in order to keep more firemen employed. However, in retrospect everything always seems more clear.

The featherbedding issue had been studied by commissions, boards and courts. Three Presidents and their labor departments struggled with this problem before today's tenuous solution was effected. In order to assess the probably effectiveness of the

²Norman Simler, "The Economics of Featherbedding," Industrial and Labor Relations Review (October, 1962), p. 114.

arbitration award and the labor-management compromises it is necessary to view these events and their ramifications from three different perspectives, those of labor, management and the general public.

Railroad labor, in exchange for a few fringe benefits lost thousands of railroad jobs. Many businessmen and economists believe that these are only short-run effects and that in the long-run the increased technology will result in lower unit costs, lower prices and a corresponding increase in demand (assuming the product or services have an elastic demand schedule). This increase in demand should create more jobs in the marketing and servicing aspects of business. However, the long-run view is little solace to the worker who has just lost his job because of the organization's technological advances. In the railroad industry, most operating employees were in a state of apprehension, afraid to incur long term debt, because they did not know whether they had enough seniority to continue at work, or if they would be required to uproot their families in search of new work.

Many workers who lose their jobs because of technological advances will be forty years old or older. At this age a man is often too set in his ways to be retrained; even if he can be retrained many corporations will not hire a man in that age bracket. The unskilled young people also pose a serious problem. Many of these people are only capable of manual labor because of their intellectual level or lack of ambition to become skilled at a trade.

The drastic employment decline in the railroad industry is not atypical of other industries. Unless something is done about this problem our national level of unemployment could rise precipitously. President Johnson's war-on-poverty program through tax cuts and educational emphasis, might be a start in the right direction.

Labor is also concerned over Congress's use of compulsory arbitration in resolving the fireman issue. It is possible that this government intervention may have set a precedent that will be followed in other industries. If compulsory arbitration is used indiscriminately it could destroy the collective bargaining process by undermining the workers right to freely contract with their employers concerning their jobs.

The railroad settlement was very generous to management. Although the railroads had to expend money for severance pay and fringe benefits, they will eventually be saving between five and six hundred million dollars a year, according to their figures, by eliminating what they considered featherbedding abuses.

The railroads were not too alarmed about government intervention in the form of compulsory arbitration. The railroads have become accustomed to government regulations. Presently the government determines railroad rates, dictates which runs may or may not be discontinued and decides when and if railroads may merge. Yet the government cannot tell railroad labor, without an act of Congress, not to commence a strike which would cripple the nation's economy.

If the railroad management for some reason denied railroad service to the public, the government would waste little time in seizing the railroads in order to protect the public's interest. Yet when the railroad unions threaten a strike which could stop rail service, it is still considered labors' protected right to strike. However, the recent railroad developments demonstrated to the disputants that the government will not tolerate a railroad strike. This does not mean that management is now in a position to force their demands upon labor. If this ever threatened to occur the government would probably seize the railroads to protect the rights of labor. Thus the government's authorization of compulsory arbitration as a means of last resort in resolving a dispute is much less dramatic than a paralyzing strike or government seizure of the railroads.

During the disputes, management often stated that it was the public who was being forced to pay for featherbedding practices by such things as higher rates. However, the amount of money saved by the public through the elimination of featherbedding is questionable. The Interstate Commerce Commission determines the rates and they will not allow the railroads to lower the rates to the point of causing excessive loss of traffic to other modes of transportation. However, the public could ultimately benefit if the railroads would devote some of their savings to researching more effective means of transportation. In order to compete in the

future the railroads must devise faster and more efficient means of transporting passengers and freight.

During the five years of resolving the railroad crisis, the public was kept in a state of suspense as to the possibility of a strike. The prolonged bargaining sessions kept workers employed whom the railroads considered unnecessary. The railroad employees were uncertain for five years as to the permanency of their jobs. None of the parties gained by the long period of time involved, and in the final analysis the matter was still settled by compulsory arbitration. Both railroad management and labor agree that it is time that the Railway Labor Act was changed. Today the collective bargaining process in the railroad industry is nothing but a formality which precedes a long drawn-out chain of mediation, boards, and commissions. However, if the disputants knew that after the bargaining sessions ended a neutral party would decide their fate, collective bargaining would be treated as a serious matter. There are cases on record in the railroad industry where awards were made because one of the disputants did not make a sincere bargaining effort. One such case took place in 1960 between the Chicago, R.I. and Pac. R.R. and the Switchmen Union Railroad management was granted an injunction to stop a strike threat because the Court ruled that the union bargained in bad faith, by turning down management proposals and offered no proposals or counter-proposals of their own.³ In the

³Paul D. Borman, "Union Referendum Provisions as an Indication of Failure to Bargain in Good Faith," Michigan Law Review (March, 1961), p. 798.

featherbedding dispute there were times that railroad management handed out mimeographed statements to the newspaper reporters after collective bargaining sessions with labor representatives.

To make the Railway Labor Act more effective each step in the proceedings could be governed by flexible time limits. The first step could be bargaining between management and labor with no outside interference. If at the end of this phase an agreement had not been reached, the National Mediation Board could mediate the sessions. At the end of this phase most disputes would probably be settled because the parties would know for a fact that the next step would be compulsory arbitration by a neutral party whose decision would be binding. At first there would be legal questions, but after those were resolved there would be no reason why the aggregated process should exceed a year in length.

The railroad industry may be in the unique position of setting a precedent for labor and management negotiations in other industries. As other industries become faced with similar problems connected with technological advances the railroad labor dispute could become a guideline for other industries to follow. Other industries should remember, however, that it is one thing to use compulsory arbitration to settle a labor-management dispute in an industry which is government regulated and quite another thing to interfere with the collective bargaining process in industries which could be classified as non-essential. If a strike occurred in the

coal industry it would be harmful to the economy and many people would be unemployed, but at least there would be some sort of stockpile from which to draw before the situation became critical. In the railroad industry there is nothing to stockpile; the nation would feel the effects of a strike almost immediately.

The public will once again be reminded of featherbedding in 1966 when the railroad arbitration award elapses and the unions attempt to restore all the firemen who were laid off. However, a comprehensive study will most likely be undertaken before the arbitration award expires. It would probably compare the safety and efficiency of operations with and without firemen. This report would be the basis for bargaining or for another arbitration award if necessary. But even when this issue is permanently resolved some featherbedding will still exist on the railroads. There are still approximately 3,900 firemen working on passenger trains and the railroads estimate that the hundred-mile-day rule is costing them an extra 107 million dollars a year.⁴

In order to compete successfully in world trade this nation must eliminate all traces of featherbedding. The productivity of the nation must be commensurate with the high wages workers receive. This productivity results from technological advances and not from protecting jobs which hinder technological advances.

⁴Marvin Hugo Zim, "Master Strategist of the Railroad Settlement," Fortune (July, 1964), p. 253.

Perhaps if other industries and the government can learn a lesson from the prolonged railroad disputes, the nation will be more prosperous because of the railroad labor-management disagreement over the existence of featherbedding.

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